

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 5399 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No @@@

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

LAXMANSINH @ LACHHU VIRBAHADURSINH NEPALI (GURKHA)

Versus

STATE OF GUJARAT

VIRBAHADURSINH NEPALI (GURKHA)

MS. TAKSHDEE G. BHATT for Petitioners

Mr. C. G. Bhalia A.C.P. for Respondent No. 1 2 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/12/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India has been filed challenging the order of detention dated 29.4.1998 (Annexure : A to the writ petition) passed by the Police Commissioner, Ahmedabad, under Section 3(2) of the Prevention of Anti-social Activities Act, 1985 (for short "PASA Act") and for release of the petitioner from illegal detention.

2. Learned Counsel for the petitioner has challenged the impugned order only on one ground that the activities of the petitioner mentioned in the grounds of detention (Annexure : B) cannot be said to be prejudicial for maintenance of public order. Grounds of detention were furnished to the petitioner by the Detaining Authority. Annexure : B discloses that five cases under the Prohibition Act were registered against the petitioner. In view of this the petitioner can be said to be bootlegger within the meaning of Section 2(b) of the PASA Act. He is engaged in the business of selling country made liquor. It is surprising that in none of these four cases, pending since more than one year, police investigation has been completed and charge sheet submitted against the petitioner. However, these repeated activities of the petitioner may be termed only as bootlegging activities, but a bootlegger cannot be kept under preventive detention unless his activities are anti-social and are prejudicial for maintenance of public order. This flows from explanation to Section 3(4) of the PASA Act.

3. The Apex Court in the case of Piyush Kantilal mehta v/s. M.M.Mehta, Commissioner of Police, reported in A.I.R. 1989 SC 491 observed in Para : 18 that the petitioner may be a bootlegger within the meaning of Section 2(b) of the PASA , but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless as laid down in Sub.Section 4 of Section 3 of the Act his activities as bootlegger affects adversely or are likely to affect adversely the maintenance of public order.

The Apex Court further observed in this case that the Detaining Authority failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are liikely to affect adversely the maintenance of public order. It further observed that it

is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses, but such incidents do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community.

4. Examining the grounds of detention in the light of aforesaid observation of the Apex Court it has to be seen first whether anti-social activities of the petitioner were connected with the bootlegging activities and secondly whether such activities disturbed maintenance of public order.

5. Registration of four cases under the Prohibition Act may indicate repetition of the petitioner in bootlegging activities, but there is no indication from the grounds of detention that when the premises of the petitioner was raided on these four occasions and country made liquor was recovered he created situation which was likely to disturb maintenance of public order or had actually disturbed maintenance of public order. Thus, repetition of these cases may simply indicate repetition of the activities of the petitioner in bootlegging which may be further described as his occupation but these repeated activities had no connection with maintenance of public order.

6. It further appears from the grounds of detention that the detaining Authority apprehended that such sale of country made liquor may occasion in repetition of Latthakand. There is, however, no material nor was any material before the detaining Authority that the country made liquor sold by the petitioner on any occasion was spurious or contaminated or patently injurious to health. Country made liquor or foreign liquor is injurious to health, but unless some thing more is shown, viz. spurious or contaminated liquor was being sold or was ever sold by the petitioner, his activities cannot be said to have likelihood of creating disturbance of public order. Thus, this apprehension in the mind of the detaining Authority was fanciful.

7. The detaining Authority has relied upon statements of two witnesses, who kept their identity secret. Previlege was claimed by the detaining Authority that on account of fear in the mind of these witnesses it was not proper in the public interest to disclose the names and addresses of these two witnesses. However, when these two statements are taken into consideration it

can be said that these incidents were stray incidents, and mere threat given to two witnesses on two occasions cannot be said to have disturbed the public order. For this, support can be taken from the verdict of the Apex Court in P.K.MEHTA's case (*supra*).

8. The first witness stated that he was threatened with knife because the petitioner suspected him to be police informer. The entire narration by this witness does not indicate that the activities of the petitioner at that time were prejudicial to maintenance of public order. If knife is brandished by a person at public place some atmosphere of fear is likely to be spread in the area, but this itself is not enough to infer that public order was disturbed in that area on that day.

9. Likewise the incident narrated by the next witness also cannot be said to have disturbed public order. The customers of the petitioner wanted to keep their cycles in front of the shop of this witness and upon objection by this witness the petitioner came out from his den, viz. place of business and severely threatened the witness and also threatened the persons who collected at the spot. Atmosphere of fear was spread in the area and usual life transaction was disturbed. This narration of incident is certainly confined between the petitioner and one witness and cannot be said to have disturbed even tempo of the life of the locality, viz. the market. Some disturbance is likely to be created when such incident takes place, but such disturbance cannot be equated with disturbance of public order.

10. From the above discussion it follows that though the two incidents narrated by the witnesses have nexus with the bootlegging activities of the petitioner, but these incidents neither actually disturbed nor were likely to disturb public order in the locality or in the area where such incidents took place. As such subjective satisfaction of the detaining Authority seems to be mechanical and cannot be sustained. The detention order has been rendered invalid and illegal because from the alleged anti-social activities of the petitioner there was no cause either for disturbance or likely disturbance of public order in the locality. The impugned order being illegal it has to be quashed.

11. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 29.4.1998 (Annexure : A to the petition) is hereby quashed. The petitioner shall be released from custody forthwith unless he is wanted in some other criminal

case.

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